
(2023) 10 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 41432 Of 2013

Commissioner Of Customs (Air)

APPELLANT

Vs

M/S. ECI Telecom India Private Limited

RESPONDENT

Date of Decision : 04-10-2023

Acts Referred:

Citation : (2023) 10 CESTAT CK 0002

Hon'ble Judges : M. Ajit Kumar, Member (T)

Bench : Single Bench

Advocate : Harendra Singh Pal

Final Decision : Dismissed

Judgement

M. Ajit Kumar, Member (T)

1. The present appeal has been preferred by the Revenue against the Order-in-Appeal C.Cus. No. 329/2013 dated 06.03.2013 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001.

2. Brief facts of the case, inter alia, are that the importer viz. M/s. ECI Telecom India Private Limited, New Delhi (respondent herein) had filed refund claims originally before the Commissioner of Customs, Import & General, New Delhi. Entertaining the view that the said claims pertain to Air Customs, Chennai, the same was forwarded to the Deputy Commissioner of Customs (Refunds), New Custom House, Chennai on 16.03.2012. Subsequently, the refund claims in question (pertaining to 10 Bills of Entry) came to be rejected by the Assistant Commissioner of Customs (Refunds) vide letter of communication in F. No. S.Misc/12/2011: Ref (Air) dated 30.03.2012 on the ground that the same were received after the expiry of one year and in contravention of the provisions of Notification No. 102/2007-Cus. dated 14.09.2007, as amended by Notification No. 93/2008 dated 01.08.2008.

3. Aggrieved by the aforesaid letter of communication dated 30.03.2012, the

claimant filed an appeal before the lower appellate authority, who vide order impugned herein, has directed the respondent to re-submit the claim before the lower authority, thereby directing the adjudicating authority to process the claim without insisting on the aspect of limitation/pass a suitable order on the merits of the claim. Being aggrieved by the above, the Revenue has filed the present appeal before this forum.

4. Shri Harendra Singh Pal, Ld. Authorized Representative (Assistant Commissioner) appeared for the appellant Revenue. The respondent was not represented, either in person or by counsel. However, since several adjournments had already been granted to the respondent arising out of his absence, the matter has been taken up for disposal on merits after hearing the Ld. Departmental Representative.

4.1 The Ld. Departmental Representative, has submitted on behalf of Revenue that as per paragraph 2(c) of Notification No. 102/2007, a refund claim should be filed within one year from the date of payment of duty. It is also stipulated in the said Notification [paragraph 2(c)] that the refund claim should be filed before the jurisdictional Customs Officer. There is no provision in the Customs Act, 1962 or any other instruction / circular issued regarding transfer of refund claim from one jurisdiction to another and acceptance of the date of filing before the wrong jurisdiction as the date of claim.

4.2 The respondent has not filed cross objections or a written reply against the appeal hence the matter is decided based on the legal position as applicable. The respondents had in their plea before the Commissioner (Appeals) relied upon the judgment of the Hon'ble High Court of Delhi in Modi Rubber Ltd Vs UOI [1997[19] RLT 479] and Hon'ble Apex Court in Peria Karamalai Tea & Products Co. Ltd Vs Collector [1996 (88) ELT A127 (SC)] that when substantive compliance of the procedural requirement is not in doubt, the same should be interpreted liberally in order not to defeat the benefit.

5. It is not disputed by Revenue that the respondent has filed the refund claim before the Commissioner of Customs, Import & General, New Delhi within one year from the date of payment of duty. However, it is their case that the same cannot be taken as the date of filing before the actual jurisdictional Commissionerate viz. Deputy Commissioner of Customs (Refunds), Air Commissionerate, Chennai. It is Revenue's contention that filing of a refund claim in a wrong jurisdiction cannot be taken lightly and cannot be condoned. This is perhaps a very narrow view and does not fit into the role of the department as a facilitator nor does it have the express sanction of law. As stated by Hon'ble Justice V.R. Krishna Iyer speaking for a Division Bench in\ State of Punjab & Anr. Vs. Shamlal Murari & Anr. [(1976) 1 SCC 719] :

"8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant,

not a resistant in the administration of justice.”

If the refund of duty paid was filed by an assessee in the wrong jurisdiction before an authority who not competent to entertain the refund claim, that too within the time limit, the said authority must transfer the application for refund claim to the competent authority, as has been correctly done in this case. As rightly held in the impugned order, the period during which the claim remained with the wrong jurisdictional authority should not be considered for calculating the time limit. The Hon'ble Apex Court in *The State of Jharkhand and others v. Brahmaputra Metalics Ltd and others* [2021 (1) SCJ 131] held that a decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred.

5.1 Rejecting the refund claim simply on the ground of delay in filing the claim before the proper authority while admitting that the appellant had filed the claim before the department on time, albeit at a wrong jurisdiction cannot be approved. In the facts and circumstances of this issue we agree with the decision of the Commissioner (Appeals) who based on the ratio of the judgments cited by the respondents before him had accepted the appeal.

6. In the aforesaid view of the matter, the Lower Authority was right in the view it took. The appeal hence fails and is accordingly dismissed. Since no other issue has been raised and considerable time has elapsed, the refund may be sanctioned expeditiously as per law.